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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,032	03/19/2004	Andrew Bartlett	MCA-650 US	7965

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EXAMINER	
MENON, KRISHNAN S	

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/805,032	BARTLETT ET AL.	
	Examiner	Art Unit	
	Krishnan S. Menon	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 4-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1,2 and 4-7 are pending as amended 11/3/06.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/110,325. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim limitations are similar, the differences being 'heat sealing' in application'325, which is implied in the claim of present application; and the thickness of the thermoplastic as being 100-125% of the thickness of the spacer

layer in the present application, which would be obvious to one of ordinary skill to provide sufficient seal.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1,2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,302,042 A in view of Rogemont et al (US 4,701,234).

Note: The originally filed Jepson claims 3 and 4 would make the filtration module admitted prior art.

GB teaches a process of making and a filtration device having filter layers and screen layers, filter layers and screen layers having openings for inlets and outlets as claimed, with the openings and the periphery of the screen having thermoplastic seals (page 4 lines 22-30, page 7 lines 9-15), the seals 100-125% of the thickness of the screens, all as claimed: see abstract, 3rd paragraph of page 1, page 2 lines 5-13 and 24-35, page 3 lines 1-12, page 7 lines 9-15 and 20-33. The seal is heat-sealed as claimed – see page 2 lines 15-22. Since the seal material penetrates several layers of the membranes and screens, the thickness of the seal layer would be greater than the

thickness of the screen layer. The recited range in the claims is between about 100% and about 125%, which means, the thickness can be anywhere from a little less than 100% to little more than 125%.

The teaching of the reference may differ from the claim language in 'molding the thermoplastic .. about the periphery...'. Rogemont teaches "molding" the seal around the periphery of the spacer layers as claimed – see abstract and column 1 lines 15-52. It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Rogement in the teaching of GB because Rogemont's method provides uniformity to the product and it would be easy to assemble. Also please note that this "molding" process to pre-assemble the seal material to the spacer is already known in the art – column 1 lines 45-52 of Rogemont. Thus the various alternatives of making the assembly of the filter layers, the seal layers and the screen layers are already known to one of ordinary skill in the art.

Regarding the radiant heat, ultrasonic or vibration welding for the method of sealing, such methods would be obvious equivalents of the generic heat seal taught by the reference, unless applicant can show otherwise.

2. Claims 1,2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogemont et al (US 4,701,234) in view of GB-042.

Rogemont teaches a process of forming a filtration module having a stack of plurality of permeable spacers and membranes positioned alternatively, providing seal layers molded to the periphery of the spacer layers, sealing of alternately positioned in feed inlet port as claimed, wherein the thickness of the seal layer is 100-125% of the

thickness of the screen layer – see abstract, column 1 lines 15-52, column 3 lines 20-30 and 50-55, column 4 lines 28-33, figures, and claim 4. The seal layer is about the periphery and around the feed ports as claimed.

The teaching of the reference differs in the "thermoplastic elastomer" as the seal and melting to seal the layers. GB teaches a thermoplastic elastomer (ethylene vinyl acetate) seal around the periphery and the holes in place of other seal materials in page 7 lines 9-15 and 20-33 and heat sealing it in page 2 lines 15-22. It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of GB in the teaching of Rogemont because GB teaches that the thermoplastic used requires low extractables (page 1 lines 22-34), and that the layers can be sealed together as one integral body (page 7 lines 20-33) leading to high quality devices (par linking pages 7 and 8).

Regarding the radiant heat, ultrasonic or vibration welding for the method of sealing, such methods would be obvious equivalents of the generic heat seal taught by the reference, unless applicant can show otherwise.

Response to Arguments

Applicant's arguments filed 11/3/06 have been fully considered but they are not persuasive.

Arguments regarding the GB reference are moot; change in the rejection. The relevant parts of the arguments are addressed in the rejection.

Arguments regarding the 103 rejection over Rogemont in view of GB: Applicant's reason for why one of skill in the art would not have been motivated to combine the use of EVA in GB with Rogemont and the quoted case law are not convincing. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The motivation to combine is clearly stated in the rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Krishnan S Menon
Primary Examiner
Art Unit 1723